Editor's Note: Overruled to the extent inconsistent with Kathryn Firestone, 148 IBLA 126 (1999)

JOHN C. SCHANDELMEIER
JACK D. JOHNSON

IBLA 94-436, 94-468 Decided January 29, 1997

Consolidated appeals from decisions of the Alaska State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to pay rental fees or submit appropriate certification for a small miner exemption. AA-029876 through AA-029879; AA-037891 through AA-037893.

Affirmed.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

   An applicant for a small miner exemption from payment of rental fees under the Act of Oct. 5, 1992, was required to file a certified statement by Aug. 31, 1993, for each of the assessment years for which the exemption was claimed. Where the applicant failed to pay the rental fee for either of the assessment years and the certificate of exemption included only 1 year, the claims are properly deemed abandoned and void.

2. Evidence: Generally--Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

   The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced documents filed with them is rebuttable by probative evidence to the contrary. However, an allegation that a small miner exemption certificate was timely filed with the proper BLM office must ordinarily be corroborated by other evidence.

3. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

   Although separate small miner exemption forms were required to be submitted for the 1993 and 1994 assessment years, the timely submission of a single form would be a curable defect if the form itself indicated that it included both years. Where a single form did

> not indicate that it was for both years, the failure to submit a separate form for the second year was not a curable defect.

APPEARANCES: John C. Schandelmeier, pro se; George R. Lyle, Esq., Anchorage, Alaska, for Jack D. Johnson.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

John C. Schandelmeier has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated April 7, 1994, declaring the C J Mines Nos. 1 and 2 placer mining claims (AA-029876, AA-029877) abandoned and void for failure to pay rental in the amount of $100 per claim or to submit a certification of exemption from payment of rental fees for the 1994 assessment years. Jack D. Johnson has filed a separate appeal from that decision and from two other decisions declaring the C J Mines Nos. 3 through 7 placer mining claims abandoned and void for the same reason (AA-029878, AA-029879, AA-037891 through AA-037893). 1/

Schandelmeier asserts that Johnson has been filing papers for the two claims in which he has an interest and suspects that those claims might have been voided so that the other owners could locate new claims and eliminate his interest. He faults BLM for not notifying him of various actions with respect to the claims. He does not, however, assert that he submitted the required payments or documentation. For his part, Johnson claims that the small miner exemption certificate for the 1994 assessment year was submitted together with the 1993 certificate which BLM received on August 18, 1993. Because both appeals involve a challenge to the same BLM decision, we consolidate them for disposition.

The relevant provisions of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1374, 1378-79 (1992), enacted by Congress on October 5, 1992, provides, in pertinent part, that:

> [F]or each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of $100 to the Secretary of the Interior or his designee

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1/ Schandelmeier's appeal has been docketed as IBLA 94-436; Johnson's appeal has been docketed as IBLA 94-468. Schandelmeier, Johnson, and one other person owned the C J Mines Nos. 1 and 2 placer mining claims. Johnson and one other person owned the C J Mines Nos. 3 through 7 placer mining claims.

> on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *. [Emphasis added.]

106 Stat. 1378. The Act contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of the $100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

The Act further provided, subject to various conditions, for an exemption from the payment of rental fees for claimants holding 10 or fewer claims, the so-called small miner exemption. Id. Additionally, the Act directed "[t]hat failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant." 106 Stat. 1379.

[1] Under the Act, claimants holding 10 or fewer mining claims, mill sites, and/or tunnel sites were afforded the opportunity to seek an exception, known as the "small miner" exemption, from the annual rental requirement. 106 Stat. 1378-79; 43 CFR 3833.1-5(d), 3833.1-6, 3833.1-7 (1993); see William B. Wray, 129 IBLA 173 (1994). Thus, a claimant could either elect to pay the rental fee or perform the assessment work, certify (by August 31, 1993) the performance of such work (prospectively in the case of work for the assessment year ending September 1, 1994), and meet the filing requirements of section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1994). See 106 Stat. 1378, 1379; 43 CFR 3833.1-7 (1993). The applicant for a small miner exemption was required, however, to file a separate request by August 31, 1993, for each of the assessment years for which he was seeking an exemption. 43 CFR 3833.1-7(d) (1993); Richard L. Shreves, 132 IBLA 138 (1995); Edwin L. Evans, 132 IBLA 103 (1995). 2/ Where an applicant failed to pay the rental fee for either of the assessment years and the certificate of exemption included only 1 year, the claims are properly deemed abandoned and void. Richard L. Shreves, supra; Jesse L. Cleary, 131 IBLA 296 (1994).

2/ The statute and implementing regulations contain other explicit requirements. The applicant must hold 10 or fewer mining and mill site claims on Federal lands. Further, the applicant, operating under a valid notice or plan of operation, must either conduct exploration for possible valuable mineralization on or produce not less than $1,500 and not more than $800,000 from his claims. Additionally, the applicant must have less than 10 acres of unreclaimed surface disturbance in connection with these operations. See 43 CFR 3833.1-6 (1993). The small miner certificate is required to contain certain information relating to these requirements. 43 CFR 3833.1-7 (1993). Unintentional failure to file complete information when the document is otherwise filed on time will not result in abandonment if the information is filed within 30 days after notice from BLM. 43 CFR 3833.4(b).

> [2] Johnson does not dispute the need to file separate requests for exemption but claims he did so:
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> [A] Certificate of Exemption was prepared and filed by Mr. Johnson's representative, but was apparently misplaced by BLM. The normal presumption of regularity that the BLM files contain all of the documents filed with the BLM should be found to be overcome in this case because a BLM employee specifically observed that Mr. Johnson's paperwork included a Certificate of Exemption for both the 1992-1993 and the 1993-1994 assessment years.

(Statement of Reasons (SOR) at 2). No corroboration of these statements is provided, however, and we have held that an uncorroborated statement that an additional document was included with a filing is generally insufficient to overcome the presumption that BLM would have taken proper notice of the document in issue, had it been received. Wilson v. Hodel, 758 F.2d 1369 (10th Cir. 1985); Diane M. Berndt, 62 IBLA 288 (1982), appeal dismissed, Civ. No. 82-0167 (D. Wyo. Feb. 9, 1983); Metro Energy, Inc., 52 IBLA 369 (1981); see Red Top Mercury Mines, Inc. v. United States, 887 F.2d 198 (9th Cir. 1989); cf. Silver King Mining Co., 122 IBLA 357 (1992) (presumption of regularity rebutted by sufficient corroboration).

[3] Johnson asserts that, in any event, the defect is curable and refers to the response provided to question C.4 in Information Bulletin No. 93-514 (August 2, 1993) as establishing that if a single exemption form was submitted and the claimant "must have intended to file an exemption for two years," it was to be treated as a curable defect. The question being answered, however, read as follows: "If I am filing for an exemption for assessment years 1993 and 1994, must I file two forms or can both years be included on one form?" It was in response to this question, which presupposed that both years would be included on a single form, that the Information Bulletin indicated that submission of a single form would be a curable defect. The form in this case indicates that it was filed only for 1993. Since the form, itself, failed to indicate that it was intended to cover 2 years, the failure to submit separate statements is not a curable defect in this case.

Turning to Schandelmeier's arguments, we note that his reliance on Johnson to file papers for the two claims provides no basis for reversing BLM's decision. See Comstock Tunnel & Drainage Co., 87 IBLA 132, 134 (1985). Nor does BLM's failure to give him notice of the requirements or of other matters in the file provide a basis for estopping BLM. All persons dealing with the Government are presumed to have knowledge of relevant statutes and regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Lester W. Pullen, 131 IBLA 271 (1994); Thomas L. Sawyer, 114 IBLA 135, 139 (1990); Magness Petroleum Corp., 113 IBLA 214, 217 (1990). BLM, therefore, had no obligation to provide Schandelmeier

with any particular notice of the changes in the law since he was deemed to know the contents of the Act and duly promulgated regulations. See David & Roirdon Doremus, 61 IBLA 367, 368 (1982). In view of the foregoing, we can find no basis for reversing the decision of the Alaska State Office finding these claims to be abandoned and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge